

REMARKS

Applicants thank the Examiner for the courtesies extended during the interview on September 20, 2007.

Claims 1-9, 12 and 13 are pending in the present application including independent claim 1. The presently pending claims are generally directed to a method for detecting an analyte residing in a test sample.

In the Office Action, claim 1 was objected to for several informalities which have been corrected herewith. Applicants therefore request that the objection be withdrawn.

In the Office Action, claims 1-9, 12 and 13 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,509,196 to Brooks et al. in view of U.S. Patent No. 6,258,548 to Buck. It was stated that while “Brooks et al. fail to teach the inclusion of a scavenging zone with the assay device...it would have been obvious to one of ordinary skill in the art at the time the invention was made to include with the method of Brooks et al. a scavenging zone or analyte modulating zone (AMZ), wherein the sample is contacted with the AMZ prior to reaching the detection or test zone, as taught by Buck because Buck teaches the benefit of including an analyte modulating zone (AMZ) with a test strip in order to remove a fraction of an analyte from a test sample prior to the sample reaching an analyte test zone to thereby increase the detectable range of analyte concentration.”

However, as discussed during the interview, combining the AMZ of Buck with the quantitative immunoassay of Brooks et al. would affect the accuracy of the determination of the amount of analyte in Brooks et al. As stated in Brooks et al., the amount of analyte in the fluid sample is the difference in the amount of analyte-bound

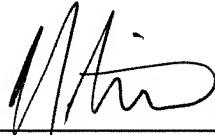
test particles arrested in the detection zone and the amount of internal control particles arrested in the detection zone, as determined by a standard curve. Col. 2, lines 1-18. Adding the AMZ of Buck with the quantitative immunoassay of Brooks et al. would cause analyte from the test sample to remain in the AMZ, thus skewing the results of the amount of analyte in the test sample. As such, it would be improper to combine the references in the manner suggested in the Office Action. Indeed, it would be improper to combine the AMZ of Buck with any reference that does not take into account the fact that analyte from a test sample will be bound in the AMZ, affecting the determination of the amount of analyte in such a test sample. As such, it is respectfully submitted that the presently pending claims patentably define over the cited references.

It is thus believed that the present application is in complete condition for allowance and favorable action, therefore, is respectfully requested. Examiner DiRamio is invited and encouraged to telephone the undersigned, however, should any issues remain after consideration of this Amendment.

Please charge any additional fees required by this Response to Deposit Account No. 04-1403.

Respectfully requested,

DORITY & MANNING, P.A.



Neil M. Batavia
Registration No. 54,599

Date

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P. O. Box 1449
Greenville, SC 29602-1449
Telephone: (864) 271-1592
Facsimile: (864) 233-7342